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Draft Model Law on Electronic Signatures

Compilation of Comments by Governments and International Organizations

Addendum

Introduction

1. In preparation for the thirty-fourth session of the Commission, the text of the draft Model Law on Electronic Signatures as approved by the Working Group on Electronic Commerce at its 35th session was circulated to all governments and to interested international organizations for comment. On 3 July 2001 the Secretariat received a note by the delegation of Greece. The text of this note, which contains comments and proposals with respect to the draft Model Law on Electronic Signatures, is reproduced below in the form in which it was communicated to the Secretariat.

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Compilation of comments

A. States

Greece

1.- Article 2(d)

The "signatory" is a person that acts either on its own behalf or on behalf **"of a person it represents"**. Apparently, the signatory is a physical person, while the person it may represent may be either a physical or a legal person. The question is whether it would be good to add, after the word "person" (second line) the words: **"physical or legal"**.

2.- Article 2(e)

One may wonder, which "other services related to electronic signature: the "Certification service provider" may, in practice, provide, except to issue certificates.

3.- Article 3

The "applicable law" (last two words in the Article) is the law to be found by the application of the proper rule of private international law of the "given forum". The question is whether, after the words "applicable law", it should be added: **"in accordance with the appropriate rule of private international law"**.

4.- Article 4(1)

(a) Perhaps, which mostly matters "in the interpretation of this Law" is the international **character** (or, nature) of it, as well as its **purpose**. If that is correct, it should, after the word "origin" (first line), add the words: **", character, and purpose"**.

(b) "Questions concerning matters governed by this Law, which are not expressly settled in it" can be settled, not only "in conformity of the general principles on which this Law is based", but **"by application of rules of an analogy"**, as well. The question is if is advisable to add these (six) words.

5.- Article 5

"Applicable law" (last two words): the comment of Article 3 (above, No 3) applies here, too.

6.- Article 6(3)(a)

It is suggestable to add the word **"only"**, after the word "linked" (second line), for emphasis.

7.- **Article 6(3)(b)**

For the same reason, before the word "control" (first line), the word **"exclusive"** may be added.

8.- **Article 7(2)**

This paragraph seems to state the obvious. It is retainable, or would be better to **delete it**?

9.- **Article 8(2)**

Certainly, liability is the result of "failure to satisfy the requirements..." but such a failure must be a "product" **of not giving reasonable care** to satisfy the requirements... Perhaps, some **qualification of the "failure"** is necessary to be inserted in the text.

10.- **Article 9(1)(f)**

To "(trustworthy) systems, procedures and human resources", perhaps, **"means"** may be added, preferably between the words: "systems" and "procedures".

11.- **Article 9(2)**

On the word "failure", the comment on Article 8(2) (above, No. 10) applies here, too.

12.- **Article 10**

(a) The comment on Article 9(1)(f) (above, No. 8), **to qualify the word "failure"**, applies also here (in the second line).

(b) If the **"factors"** enumerated in this Article are not exhaustive, but indicative, the word **"indicative"** might be inserted between the words "following" and "factors" (in the third line). In such a case, **Article 10(g)** should be **deleted**, as superfluous.

13.- **Article 10(e)**

Only "body" (i.e. legal person)? What about **"(an independent) physical person"**? Permitted, or prohibited?

14.- **Article 11(b)**

Is the idea of this provision to establish a (legal) **presumption** of failure etc? Perhaps, some clarification, even of a drafting character, is necessary, or useful.